More's "Appeal" in *A Dialogue Concerning Heresies*

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More's *Dialogue Concerning Heresies* appears to be more than an appeal to those influenced by the views of Martin Luther and William Tyndale. It also appears to employ the framework of a legal appeal. Was More trying to convey more than his doctrinal opposition to Luther and Tyndale? An analysis of modern-day, American, and Medieval and Renaissance ecclesiastical and civil law, common law, and Chancery court procedures for reviewing court judgments signals paths for exploring the legal undertones of More's *Dialogue.* A comparison of More's argument with these appellate processes, reveals a similarity in function, use of a hierarchical authority, issue identification and argument development, limitations of review, and publication of arguments.

Introduction

Thomas More's *Dialogue Concerning Heresies* is probably not the first place one would look for the presence of legal procedure or a commentary on the law.[2] On the surface, More's *Dialogue* is an appeal to those influenced by the views of Martin Luther and William Tyndale. However, below the surface, there appears to be another type of appeal taking place, a legal appeal. Was More trying to convey more than his doctrinal opposition to Luther and Tyndale? Was More's choice to present his argument in the style of a legal appeal compatible with his humanist principles?[3]

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[2] See Thomas More, *A Dialogue Concerning Heresies* (trans. Mary Gottschalk, Scepter Publishers, Inc., 2006).

[3] In his book on the life and writings of Thomas More, James Monti discusses Christian humanism. James Monti, *The King's Good Servant but God's First: The Life and Writings of St. Thomas More* (Ignatius Press 1997). Monti described the humanist movement, stating: "So much of what Christian humanism stood for stemmed from its vision of human nature, truly damaged by original sin, yet nonetheless capable of serving as the handmaid of grace, endowed with a free will that in More's words, 'doth . . . in such as have age and reason, work and walk on with God.'" *Id.* at 180. Christian humanists emphasized "the active pursuit of perfection in one's own life through the imitation of Christ." *Id.* at 180. Monti attributes the Christian humanist movement with engendering in More a heightened sense of "the fundamental goodness of the human person, created in the image of God." *Id.* at 179–80. Monti also comments on the humanists' quest for truth, stating: "Christian humanism promoted a renewed interest in the classic works of ancient Rome and Greece, but it more specifically sought to revitalize Christianity through a more intensive study of the original texts of the Scriptures and of the Fathers of the Church. The insights of theology were to be brought to bear in a more practical, immediate manner upon everyday life in order that souls might more closely imitate and follow

Christian theology includes a number of metaphors for the role of the advocate, including references to Christ as an advocate for humanity, the Holy Spirit as the divine advocate, and advocacy on behalf of the poor.[4] Canon Nine of the Second Lateran Council, convened by Pope Innocent II in 1139, commented that lawyers "neglect the psalmody and hymns, placing their trust in the power of fine rhetoric . . . they confuse what is right and what is wrong, justice and iniquity, by reason of the variety of their arguments."[5] The twelfth-century monk, Bernard of Clairvaux, also critiqued advocates. However, his critique has been described as less of a condemnation of the intrinsic nature of the legal profession and more of a call for advocates to heed the ways in which pride, ambition, and greed may distort true knowledge which aims to serve one's neighbor.[6] However, as Bernard of Clairvaux also pointed out, "If cases are not tried and litigants heard, how can judgment be passed?"[7] Given More's training in theology and law, it is not surprising that he may have used the framework of a legal appeal to advocate against what he believed to be Luther and Tyndale's heresy and distortion of true knowledge.

In my view, More uses the framework of a legal appeal in the *Dialogue*: (1) to give his argument an inherent authority; (2) to reinforce that conscience and reason must be applied to the issues concerning the Church; (3) to suggest other non-religious risks posed by Luther and Tyndale's views; and (4) to support the humanist argument in favor of legal publishing. By examining the framework of modern-day, American appeals, and Medieval and Renaissance procedures for reviewing court decisions, it is possible to see how More used this legal concept to shape the religious dispute. The first part of this paper is largely concerned with a brief description of appeals or the procedures for reviewing court decisions. The second part of this paper explores More's *Dialogue* for evidence of an appellate framework.

Appeals or Review of Court Decisions

This section will attempt to provide a basic overview of the modern-day, American appeal and the procedures for reviewing court decisions in the Medieval and Renaissance ecclesiastical and civil law, common law, and Chancery courts. This analysis does not purport to be comprehensive, but rather hopes to signal paths for further exploration into the legal undertones of More's Dialogue.

Modern-day, American Appeals

A party aggrieved by the judgment or order of a trial court can appeal to a higher court, where a group of judges will determine whether the trial court's judgment or order was correct or

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Christ." *Id.* at 80. He remarks that the humanists revived historical studies and More was a leading exponent of this revival in his country. *Id.* at 87. Further, Monti argues that: "More's attitude toward miracles and other preternatural occurrences provides a superb example of Catholic humanism, a humanism that both knew how to engage in careful, rigorous scholarly inquiry that was willing to discard superfluities in the quest for truth yet could remain open to the reality that God can and does on occasion overrule the laws of nature to manifest His power, His wisdom, and His continuous involvement in the affairs of mankind." *Id.* at 239.

[4] Amelia J. Uelmen, *A View of the Legal Profession from a Mid-Twelfth Century Monastery*, 71 Fordham L. Rev. 1517, 1536–37 (2003).

[5] Uelmen, *supra* n. 4 at 1525 (quoting Canon Nine of Second Lateran Council which focused on concern about professional studies for temporal gain).

[6] Uelmen, *supra* n. 4 at 1536.

[7] Uelmen, *supra* n. 4 at 1533, quoting 13 The Works of Bernard of Clairvaux, Five Books on Consideration, Book 1:13 (John D. Anderson & Elizabeth T. Keenan trans., Cistercian Pub. 1976).

erroneous.[8] The modern-day, American appeal performs three functions: (1) the correction of errors made by the trial courts; (2) the uniform application of the law throughout the jurisdiction; and (3) the clarification of law through precedent.[9] With some exceptions, the dissatisfied or appealing party has a right to seek review by the appellate court immediately above the trial court.[10] An appeal to an even higher court is often discretionary, which means the court is empowered to choose the appeals it will hear and to turn others aside.[11]

In modern-day America, an appeal is not an open-ended reconsideration of what happened in the trial court.[12] Appellate courts review the orders or judgments of lower courts for mistakes the law categorizes as error.[13] An appellate court will not substitute its judgment for that of the court below unless there is error, even if the result of the lower court's judgment seems unfortunate.[14] Also, reversal of the judgment of the trial court below will occur only if the error caused the order or judgment being appealed.[15] Further, in some cases, it is not enough to show error as an intellectual matter, it is necessary to show the error resulted in injustice or harm.[16]

The appellate process operates as a check on judicial discretion by subjecting trial courts to review by a higher court.[17] The standard of review by which an appellate court examines a trial judge's ruling operates to limit judicial discretion.[18] The law presumes the trial court's judgment to be correct unless an appellant demonstrates the appropriate standard of review was violated.[19] Often a higher court will not reverse a lower court's decision unless the lower court abused its discretion.[20] A less deferential standard of review occurs when the appellate court reviews a trial court's ruling de novo.[21] Under de novo review, an appellate court will look at the issue anew.[22]

Appellate review is mostly limited to issues of law, rather than factual determinations which fall within the province of the jury or the trial court in cases tried before the bench.[23] Also, appellate review is limited to issues that were preserved in the lower court.[24] An issue is preserved if the appellant raised the issue and the lower court ruled on it.[25] Further, appellate review is limited to the issues raised on appeal.[26] In an adversary system, it is the job of the appellant's attorney to point the error out to the higher court; an appellate court will not survey the record looking for error.[27] In modern-day appeals, an appellate theory should be solidly built on the record and the law, explain unfavorable facts, be framed in terms of basic fairness to the parties, and apply logic

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[8] Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*, 345 (3d ed. 1998).
[9] Neumann, *supra* n. 8 at 345–46.
[10] Neumann, *supra* n. 8 at 346.
[11] Neumann, *supra* n. 8 at 346.
[12] Neumann, *supra* n. 8 at 352.
[13] Neumann, *supra* n. 8 at 352.
[14] Neumann, *supra* n. 8 at 352.
[15] Neumann, *supra* n. 8 at 352.
[16] See Neumann, *supra* n. 8 at 365.
[17] Eric G. Barber, *Judicial Discretion, Sentencing Guidelines, and Lessons from Medieval England*, 27 W. New. Eng. L. Rev. 1, 9 (2005).
[18] Barber, *supra* n. 17 at 9.
[19] Neumann, *supra* n. 8 at 355.
[20] Neumann, *supra* n. 8 at 368–73.
[21] Barber, *supra* n. 17 at 9; NEUMANN, *supra* n. 7 at 369.
[22] Barber, *supra* n. 17 at 9.
[23] Neumann, *supra* n. 8 at 353.
[24] Neumann, *supra* n. 8 at 353.
[25] Neumann, *supra* n. 8 at 353.
[26] Neumann, *supra* n. 8 at 353.
[27] Neumann, *supra* n. 8 at 353.

and common sense.[28] A persuasive appellate theory also: (1) is grounded on the procedural posture of the higher court, e.g., for the attorney urging reversal the theory is one of error, while for the attorney defending the result below the theory is one of absence of error; (2) does not ignore the limitations on the appellate court; (3) addresses the judges' concerns relating to a fair and just result; (4) is soundly grounded in public policy, i.e., how will the court's decision affect other cases in the future; (5) asks the judges to decide only that which is necessary to the appeal; and (6) directs the appellate court's attention only to the most compelling reasons for reversal.[29]

Oral argument in an appeal can be the most scholarly type of conversation known to the practice of law.[30] It is argued that the most effective way to present oral argument in an appeal is in a tone of "respectful intellectual equality."[31] After oral argument, the judges confer and discuss the merits of the appeal.[32] In complex and troubling cases, the judges may confer for longer periods of time and may change their views as they discuss the parties' arguments, and examine the authority relied on and the record of the case.[33] Once the judges have reached a decision, they will issue a written opinion explaining their reasoning.[34] These opinions are published in both printed volumes and through electronic media. If the losing party can appeal further, the whole process may begin again.[35]

Medieval and Renaissance Review of Court Decisions

The modern-day, American appeal is based on two separate English systems, the appeal and the writ of error. Although it is more closely related to the narrow theory of redress represented by the English writ of error in common law courts, some part of the original substantive theory of an appeal in the ecclesiastical and civil law courts seems to remain.[36] In addition, the English Chancery courts offered another example of a system to seek redress from court decisions. Further, the decisions of modern-day, appellate courts are published, an idea born of the early sixteenth-century humanist movement.

Ecclesiastical and Civil Law Courts

A few hundred years ago, "appeal" referred to a legal procedure in a separate system in the English courts governed by canon and civil law.[37] The core elements and institutions of canon law constituted a working, international legal system that transcended ethnic, linguistic, and political boundaries throughout Western Christendom.[38] Although practices varied, depending on local needs, customs, and habits, the basic elements of the system were uniform.[39] An appeal did not

[28] See Neumann, *supra* n. 8 at 365.
[29] Neumann, *supra* n. 8 at 365–66.
[30] Neumann, *supra* n. 8 at 350.
[31] Neumann, *supra* n. 8 at 383.
[32] Neumann, *supra* n. 8 at 350.
[33] Neumann, *supra* n. 8 at 350.
[34] Neumann, *supra* n. 8 at 350.
[35] Neumann, *supra* n. 8 at 350.
[36] Mary Sarah Bilder, *The Origin of the Appeal in America*, Hastings L.J. 913, 915 (1997). *But see id.* at 916–17 (discussing Roscoe Pound's belief that American appeal resulted from "confusion and a laxity or liberality" about English common law procedures and Julius Goebel's argument that the appeal was the result of colonial adaptation of English justice-of-the-peace practice).
[37] Bilder, *supra* n. 36 at 914.
[38] James A. Brundage, *The Learned Judge: The Development of an Ideal*, 1 U. St. Thomas L.J. 434, 445-46 (2004).
[39] Brundage, *supra* n. 38 at 446.

refer to correction by a higher court, but a procedure by which a higher tribunal could completely rehear and redecide the law and facts of a case.[40] These appeals represented a particular attitude towards the hierarchy of authority and a substantive theory of justice that emphasized the importance of equity.[41]

An appeal removed a cause from an inferior judge to a superior judge, e.g., an appeal to Rome.[42] The removal of a cause to a superior judge hints that the legitimacy of the appeal rested ultimately on a supreme authority, the authority of God.[43] The appeal was first a symbol of Rome's authority and later, became a symbol of the King's authority.[44] In England, the appeal moved from the local courts in the diocese to the courts of the archbishops and then, to the courts of the Pope.[45]

The association of the appeal with papal power made it far more than merely a procedural device.[46] In English history, the appeal was at the center of two significant political struggles between the English crown and Rome: (1) when Archbishop Thomas Becket disagreed with and protested Henry II's attempt to end the Pope's appellate jurisdiction through the Constitutions of Clarendon, the eighth chapter of which substituted the King for the Pope as the place of appeal; and (2) when Henry VIII attempted to prevent an appeal to the Pope by Catherine of Aragon through an act, For the Restraint of Appeals, passed in 1533, which ended all appeals to the Pope.[47]

An appeal was an equitable theory of justice arising from medieval, Roman canon law.[48] Judgments in ecclesiastical and civil law courts were to be based on equity and conscience.[49] Equity arose from conscience, which was more than the distinction between right and wrong.[50] Conscience was "a form of 'applied knowledge,' an 'art of translating' the distinction into 'specific rules of conduct to be followed in particular situations.' "[51]

Common Law Courts

In Medieval and Renaissance common law courts, it was possible to obtain redress from a trial court's judgment through the writ if error.[52] A writ of error was a claim that an error had been made in the various writs and pleas of the case.[53] However, unlike the courts governed by canon and civil law, the common law courts did not operate in a strictly hierarchical fashion.[54] The reviewing authorities for the writ of error operated under a horizontal system of "mutual review."[55] These proceedings had a narrow scope of review and were limited to the record, i.e., there was no new evidence.[56] Review was limited to errors of law and had nothing to do with whether an

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[40] Bilder, *supra* n. 36 at 914, 922.
[41] Bilder, *supra* n. 36 at 914.
[42] Bilder, *supra* n. 36 at 928.
[43] Bilder, *supra* n. 36 at 928.
[44] Bilder, *supra* n. 36 at 928.
[45] Bilder, *supra* n. 36 at 929.
[46] Bilder, *supra* n. 36 at 929.
[47] Bilder, *supra* n. 36 at 929–30. Later, by the beginning of the seventeenth century, the term "appeal" began to appear in conjunction with the Chancery courts. *Id.* at 934.
[48] Bilder, *supra* n. 36 at 931.
[49] Bilder, *supra* n. 36 at 933.
[50] Bilder, *supra* n. 36 at 933.
[51] Bilder, *supra* n. 36 at 933 (discussing Christopher St. German's *Doctor and Student*).
[52] Bilder, *supra* n. 36 at 926.
[53] Bilder, *supra* n. 36 at 926.
[54] Bilder, *supra* n. 36 at 927.
[55] Bilder, *supra* n. 36 at 927.
[56] Bilder, *supra* n. 36 at 926.

injustice had occurred.[57] Also, review of a case by writ of error did not involve a rehearing and cases were remanded to the original court for further proceedings or new trials.[58]

Another mechanism for limiting the discretion of Medieval judges was appellate review.[59] However, appellate review of Medieval judges was different from our modern-day conception of an appeal.[60] Judges were servants of the king and, as a result, had limited discretion.[61] In Medieval England, this type of "appeal" was a charge against the judge, personally, for his decision in a case.[62] It was a means of accusing the jury or judge of giving a false verdict.[63] Only under certain circumstances did an appeal act as a mechanism for correcting the miscarriage of justice.[64] Parties did not have a right to appeal. However, in difficult cases, some county courts sought the advice of the royal court in Westminster.[65] Also, there was no formalized appellate structure and it has been argued these appeals are better thought of as an ad hoc limit on, rather than a structural limit to, a judge's discretion.[66]

Chancery Court

Although Chancery was not originally a court, signs of judicial activity appeared in several of its activities.[67] There were two sides to the Chancery, the Latin side and the English side.[68] On the Latin side, the Chancery controlled questions regarding royal grants, inquisitions concerning the property rights of the crown, and common law jurisdiction regarding personal actions involving its clerks, servants, and officials.[69] On the English side, the Chancery was an extraordinary court for common pleas.[70]

The King's duty to dispense justice meant he was to ensure the law was enforced and to provide redress in cases where the law itself was defective.[71] English chancellors relieved these defects through auxiliary, corrective, and exclusive jurisdiction.[72] It has been argued that the chancellor did not interfere with the course of common law, but intervened to ensure the law was applied according to its true effect and intention.[73] The Chancery did not interfere with the common law courts because each case turned on its own facts, decrees were not judgments of record, and only the parties of the case were bound.[74]

Two of the most vital elements of the Court of Chancery were its flexibility to deal with difficult cases and the impact of several different ideas of law and jurisprudence in formulating

[57] Bilder, *supra* n. 36 at 927.
[58] Bilder, *supra* n. 36 at 927.
[59] Barber, *supra* n. 17 at 30 (discussing four main structures for limiting judicial discretion in medieval England).
[60] Barber, *supra* n. 17 at 35.
[61] Barber, *supra* n. 17 at 38–39.
[62] Barber, *supra* n. 17 at 35.
[63] Bilder, *supra* n. 36 at 926.
[64] Barber, *supra* n. 17 at 35. Bilder does not specify under what circumstances an appeal in the common law courts acted as a mechanism for correcting the miscarriage of justice.
[65] Barber, *supra* n. 17 at 35.
[66] Barber, *supra* n. 17 at 35.
[67] Timothy S. Haskett, *The Medieval English Court of Chancery*, 14 Law & Hist. Rev. 245, 248 (1996).
[68] Haskett, *supra* n. 67 at 248.
[69] Haskett, *supra* n. 67 at 248.
[70] Haskett, *supra* n. 67 at 248.
[71] Haskett, *supra* n. 67 at 265.
[72] Haskett, *supra* n. 67 at 265.
[73] Haskett, *supra* n. 67 at 272 (discussing St. German).
[74] Haskett, *supra* n. 67 at 252–53.

responses to new needs.[75] Although the Chancery was not a court of canon law, there are signs of its influence.[76] Each chancellor decided causes according to his own notions of right and wrong, probably using common law and ecclesiastical jurisprudence as guides.[77] By the Tudor period, it was said the Chancery was a court of conscience, not a court of law.[78]

Legal Publishing

In the early sixteenth century, legal print was unusual.[79] John Rastell, More's brother-in-law,[80] pioneered the argument in support of publishing the law.[81] Rastell's argument for publishing the law was constructed from the humanist topoi about popular law:

> Well-made laws, not riches, power, or honors, were the foundation of the commonwealth, tutoring subjects in good manners, respect for God, and the art of peaceful living among neighbors. Wholesome law could only do its good work if conscientiously taught to subjects who must know what they are to obey and must have before them the models towards which to orient their character.[82]

Generally, humanists encouraged legal publishing.[83] "Through legal publishing, 'universally the people of the realm might soon have the knowledge of the said statutes . . . the better to live in tranquility and peace.' "[84] The humanist support of legal print was part of a larger commitment to legal accessibility.[85] The humanist commitment to legal accessibility had three interrelated parts: (1) an unspoken approval of print; (2) a preference for Latin or English over French in the hope of making the law accessible to the literate; and (3) the direction of books to a broad audience, rather than a narrow professional one.[86] Rastell argued legal publication furthered professional and lay education, loyalty to God's word, obedience to the prince, neighborliness, social peace, and political unity.[87]

Although law books posed less danger than religious printing because the lawyers faced no foreign, underground press or dissident translations, legal print also made dissent more formidable by enabling rivals of royal justice to present more sophisticated legal challenges.[88] Rastell addressed the concerns that legal publishing would reduce lawyers' income and heighten strife by pointing out that law books were an introductory tutor, but when uncertainties or lawsuits arose, a man should

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[75] Haskett, *supra* n. 67 at 257.
[76] Haskett, *supra* n. 67 at 272.
[77] Haskett, *supra* n. 67 at 256.
[78] Haskett, *supra* n. 67 at 267.
[79] Richard J. Ross, *The Commoning of the Common Law: The Renaissance Debate Over Printing English Law*, 146 U. Pa. L. Rev. 323, 329 (1998).
[80] It is interesting to note that William Rastell, John Rastell's son and More's nephew, edited the 1557 edition of the book and gave it the short title *Dialogue of Heresies*. More, *supra* n. 2 at 36.
[81] Ross, *supra* n. 79 at 329–30.
[82] Ross, *supra* n. 79 at 330.
[83] Ross, *supra* n. 79 at 331.
[84] Ross, *supra* n. 79 at 330–31.
[85] Ross, *supra* n. 79 at 332. It is interesting to note that some of the most distinguished figures responsible for legal publishing were Catholic, while most of the early critics were Protestants. Ross, *supra* n. 79 at 348.
[86] Ross, *supra* n. 79 at 331–32.
[87] Ross, *supra* n. 79 at 340.
[88] Ross, *supra* n. 79 at 338–39.

seek counsel from men learned in the law of the realm that he may better do his duty to his prince and live in peace with his neighbor, in accordance with the pleasure and commandment of God.[89]

In the Tudor period, Chancery became a court where every item of procedure was recorded.[90] In the early sixteenth century, the public began using newly circulated collections of case notes to support arguments in Chancery.[91]

Presence of an Appellate Framework in the Dialogue

More's argument in the *Dialogue* appears to be analogous to a legal appeal. The author's comment in his letter of introduction that he knows More is "a ready and sure *defender* in such challenges" hints at the use of a legal framework.[92] A comparison of More's argument with the appellate process, reveals a similarity in: (A) function; (B) use of a hierarchical authority; (C) issue identification and argument development; (D) limitations of review; and (E) publication of arguments.

Dialogue Functions as an Appeal

Throughout history the different methods of reviewing court decisions have performed different functions. Modern-day legal appeals perform the functions of correcting errors, uniformly applying the law, and clarification of the law.[93] Appeals in Medieval and Renaissance ecclesiastical and civil law courts functioned as a procedure for completely rehearing a case under a substantive theory of justice[94] and may also have served as a means of ensuring the uniform application of the law.[95] In Medieval and Renaissance common law courts, writs of error functioned as a means for correcting errors of law on the face of the record and "appeals" functioned as a means of accusing the judge of abusing his discretion or giving a false verdict.[96] In Medieval Chancery, chancellors performed the function of ensuring the law was applied according to its true meaning and intent.[97] Did More present his argument in the style of a legal appeal to signal to his readers the function of the *Dialogue* was: (1) to correct the error of those who judged Luther and Tyndale's theology true?; (2) to clarify the doctrine and position of the Roman Catholic Church, and to ensure the true meaning of that doctrine was given effect?; (3) to encourage a uniform doctrine or faith in England?; or (4) to accuse Luther and Tyndale of abusing their discretion or promoting a false verdict?

First, the *Dialogue* appears to argue that errors of judgment have been made and seeks to correct those errors. In the letter of introduction the author states his desire to "spread the real truth," and laments that "[t]he rituals of formal debate distort much of the content . . . when one focuses more on how to conduct oneself than on what one will say."[98] The Messenger also mentions the author's

[89] Ross, *supra* n. 79 at 340.
[90] Haskett, *supra* n. 67 at 279.
[91] Haskett, *supra* n. 67 at 279.
[92] More, *supra* n. 2 at 45 (emphasis added)
[93] Neumann, *supra* n. 8 at 345–46.
[94] See Bilder, *supra* n. 36 at 914.
[95] See Brundage, *supra* n. 38 at 445–46 (canon law constituted working international legal system and basic elements of system were uniform).
[96] See Bilder, *supra* n. 36 at 926–27.
[97] See Haskett, *supra* n. 67 at 265, 272.
[98] More, *supra* n. 2 at 44–45.

perception that some folk have been persuaded to the contrary and his desire to answer them with the truth.[99] In More's letter responding to the author of the letter of introduction, he also suggests the *Dialogue* will perform the function of error correction when he comments that many things imputed to Luther and another could not be proved, and he stated that he showed the Messenger "the books of the one and the actual court records concerning the other" so they could guarantee him of the truth.[100] Further, in the opening of the *Dialogue*, More tells his readers he has consulted with "men more learned than [him]self" and he would not print anything concerning his faith unless those men considered it profitable or, at least, harmless.[101] Also, More expresses his concern regarding the appropriateness of repeating the Messenger's allegations because they were disrespectful and incorrect.[102]

Second, the *Dialogue* appears to perform the appellate function of clarifying the position of the Church and ensuring the intended meaning of that position was given effect. The need for clarification is suggested by references to confusion and doubt regarding what one should believe. The Messenger related that the author of the letter of introduction was concerned about "the doubt [he] has perceived in others" and that "some things were being talked about in such a way that [he] did not really know [himself] which side [he] should believe."[103] In More's letter responding to his friend, More appears to express his attempt at clarifying matters when he stated that the conclusions reached in his discussions with the Messenger are certain, but he leaves to his friend's judgment whether his arguments are effective or sufficient.[104] Also, as Gerard Wegemer and Stephen Smith note in their introduction to the *Dialogue*, "More discovers the roots of the youth's confusion by asking probing questions and by artfully addressing his concerns in classic Platonic fashion."[105] More expressly identified the need for clarification when he and the Messenger agreed that the dispute between Christians arose from differing interpretations of the Bible.[106]

An example of More's attempt to clarify the Church's position and to give effect to its intended meaning can be observed in More's response to the Messenger's belief that the Church will not allow the Bible to be translated into English. More clarified the Church's position when he stated:

> Finally, it seems to me that the synodal decree of which we were speaking just now has settled this question already. For when the clergy therein agreed that the English Bibles should remain which were translated before Wycliffe's day, they consequently did agree that there was nothing wrong with having the Bible in English.[107]

Also, he attempted to give effect to the intent of the Church's position when he commented, "But never did they intend, as I see it, the forbidding of the Bible's being read in any vernacular tongue."[108]

Another example of More's attempt to clarify and to give effect to the intent of the Church's position occurs when the Messenger related that an individual, versed in the law, showed him a

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[99] More, *supra* n. 2 at 47.
[100] More, *supra* n. 2 at 46.
[101] More, *supra* n. 2 at 42.
[102] More, *supra* n. 2 at 42.
[103] More, *supra* n. 2 at 47.
[104] More, *supra* n. 2 at 46.
[105] Gerard B. Wegemer & Stephen Smith, *Introduction* to Thomas More's *A Dialogue Concerning Heresies,* (trans. Mary Gottschalk, Scepter Publishers, Inc., 2006) 17–35, 18.
[106] More, *supra* n. 2 at 128.
[107] More, *supra* n. 2 at 388.
[108] More, *supra* n. 2 at 384.

bona fide law in which Pope Gregory III prohibited the veneration of images.[109] More responded by asking the Messenger, "Did he . . . or you either, read the next law following in the book?" and explaining "But if you had read either the next law following or the gloss upon the self-same law that you read, you would then have seen that the law which he showed you lends little support to his argument."[110]

Third, the *Dialogue* appears to perform the appellate function of encouraging a uniform doctrine and faith. More accomplished this by discussing the uniformity of the Church's doctrine, pointing out Luther's inconsistency, and conceding that reform was needed within the Church. When discussing whether the interpretations of the Church theologians should be believed, More pointed to the uniform doctrine of the Church, stating "we are speaking not about the doctrine of one man or two in the Church, but about the common accord of the Church."[111] More criticized Luther's doctrine as inconsistent and lacking in the uniformity present in the Church's doctrine, when he commented "Now as for [Luther's] consistency . . . it shows up in what I have related before in his continual changing in his heresies from day to day, from worse to worse, which course he kept regarding not only the matters mentioned above, but also almost all the rest."[112] Also, More encouraged a uniform doctrine by charging the Lutherans with "sowing schisms and seditions among Christian people."[113] Further, More admitted that reform was needed, but encouraged a uniform doctrine and faith by arguing such reform should be accomplished within the Church. An appellate theory should explain unfavorable facts and be framed in terms of basic fairness to the parties.[114] As Wegemer and Smith note in their introduction to the *Dialogue*,

> More does not deny that much reform is needed, but he does argue that the Church, as Christ's bride on earth, deserves due respect and indeed faith, especially on account of Christ's clear promises that he would never abandon the Church and that the Holy Spirit would be present and active in the Church until the end of time. An important part of giving that respect and of exercising genuine faith is to use legitimate means to bring about the Church's reform—not to recklessly champion revolutionary ideas that reject "the unanimous accord and agreement of all Christian people these fifteen hundred years."[[115]]

Fourth, the *Dialogue* appears to perform the appellate function of accusing Luther and Tyndale of abusing their discretion by promoting a false verdict. More accused Luther and Tyndale of acting without reference to guiding rules and principles, i.e., reason, truth, custom, and virtue, thereby, promoting wrong opinions and propagating heresy. More argued Luther failed to adhere to guiding rules and principles when he stated:

> [L]uther says that because it is not commanded by Scripture, we may therefore choose whether we will do it or not do it . . . . that one is not bound to believe anything unless it can be proved conclusively by Scripture. And from there he goes so far that no scripture can be conclusive proof of anything that he wants to deny. For he will not acknowledge it as conclusive no matter how obviously it is. And he will call conclusively for him that text that is conclusively against him. And

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[109] More, *supra* n. 2 at 405.
[110] More, *supra* n. 2 at 405.
[111] More, *supra* n. 2 at 199.
[112] More, *supra* n. 2 at 415.
[113] More, *supra* n. 2 at 467.
[114] See Neumann, *supra* n. 8 at 365.
[115] Wegemer & Smith, *supra* n. 105 at 29, *quoting* More, *supra* n. 2 at 394–95.

> sometimes, if it is too plainly against him, then he will say it is not Scripture, as is his ploy with the Epistle of Saint James.[116]

With regard to Luther, More also asserted that when Luther was unable to defend his beliefs, he resorted to "ranting." More stated, "But soon after, when [Luther] was in such a way answered, by good and knowledgeable men, that he perceived himself unable to defend what he had affirmed, then he fell from reasoning into ranting, and utterly denied what he had before affirmed."[117] Similarly, with regard to Tyndale's failure to act in accordance with guiding rules and principles, More commented that "Tyndale does not in his book give any answer to that point [i.e., priests must have wives], but rants and raves on and on without discussion, simply saying that Scripture is clearly on his side there."[118]

In addition, More claimed Luther promoted wrong opinions and propagated heresy when he stated:

> No, the real reason why the reading of [Luther's] books is not allowed is that his heresies are so many, and so abominable, and the 'proofs' wherewith he professes to make them worthy of acceptance are so far from reason and truth, and so far against the right understanding of holy Scripture—of which, under pretext of a great zeal and love for it, he labors to destroy the credibility and good use—and, finally, he takes so far everything against good custom and virtue, inciting the world to wrong opinions about God and to boldness in sin and wretchedness, that from the reading can come no good, but much harm.[119]

More made a similar accusation with regard to Tyndale when he stated:

> [T]hat you may perceive that [Tyndale] has thus conducted himself in his translating with the intention of thereby propagating Luther's heresies and his own. For first he would make the people believe that we should believe nothing but plain Scripture, in which point he teaches a plain pestilent heresy. And then he would with his false translation make the people believe further that such articles of our faith as he is striving to destroy, and which are well proved by holy Scripture, are in holy Scripture not at all spoken of; and that the preachers have for all these fifteen hundred years been purposefully misquoting the Gospel and englishing the Bible wrongly to lead the people out of the right way."[120]

Use of Hierarchical Authority

Intrinsic to an appeal is the notion of review by a higher authority. The modern-day, American appeal operates through an established system of vertical judicial review. Similarly, the Medieval and Renaissance ecclesiastical and civil law courts also operated in a hierarchical system.[121] Conversely, the Medieval and Renaissance common law courts operated under a horizontal system of review.[122] Did More use the style of a legal appeal to emphasize the importance of the Church's authority? Was More attempting to show Luther's and Tyndale's beliefs also threatened the structure of the English legal system as it existed at that time?

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[116] More, *supra* n. 2 at 176–77.
[117] More, *supra* n. 2 at 411.
[118] More, *supra* n. 2 at 347.
[119] More, *supra* n. 2 at 395.
[120] More, *supra* n. 2 at 333.
[121] See Bilder, *supra* n. 36 at 928.
[122] See Bilder, *supra* n. 36 at 927.

First, the *Dialogue* appears to seek review of the acceptance of Luther's and Tyndale's beliefs by a higher authority. A legal appeal provides an aggrieved party the opportunity to have a judgment reviewed by a higher judicial body to determine whether the judgment was correct or erroneous.[123] An indication that the *Dialogue* serves as an appeal to the judgment of a higher authority appears in the letter of introduction when the author indicated he was aggrieved by an acceptance of the views promulgated by Luther and Tyndale, and was seeking further review or discussion regarding the matter.[124] The author of the letter of introduction conveyed he was seeking review of certain matters when he commented that the matter of Luther and Tyndale's arguments against the Church have been previously discussed, additional things have occurred since that discussion, and others may be able to judge the matter better than he.[125] Also, in his letter, the author expressed that he was aggrieved by these matters when he assured More that "some folk here are talking very strangely about the things that [the Messenger] will bring up to you"[126] and his concern is "[n]ot just on account of the spoken statements they relate that come from there, but also, most especially through the occasion of some letters vilely written and sent here from London by a priest or two whom they take here for honorable."[127] The author's desire for review of these matters is also evident when the Messenger explained that the author of the letter of introduction "sent [the Messenger] to [More] not because of any doubt [he] had concerning many of those things that he would have [the Messenger] mention to [More], but because of the doubt that [he] perceived in many others, and in some folk plain persuasion to the contrary, whom [he] would be eager to answer with the truth."[128]

Second, the *Dialogue* hints at the need for the hierarchical authority present in ecclesiastical and civil law appeals. The legitimacy of the ecclesiastical and civil law courts rested on a supreme authority, the authority of God, and was associated with papal power.[129] More asserted that some matters, such as miracles, should not be left to the judgment of man, but should be left to the discretion of the highest authority, God, when he stated, "So as for the times, places, and occasions, reason dictates that we leave them to [H]is discretion."[130] Also, More pointed to the Church's supreme authority when he stated, "Christ is the man who you are sent to and commanded by God to believe and obey, but also that the church is the person whom you are by Christ commanded to listen to and obey." He conveyed that the Church's authority extended beyond matters of faith when he stated, "that we are commanded by Christ to listen to, believe, and obey the Church in matters of faith as well as of morals." In addition, he expressed that Luther and Tyndale's beliefs threatened the existing hierarchical system of authority when More pointed out to the Messenger "Whereas God would have the Church be your judge, you would now be judge over the Church."[131] Further, More showed Luther's disdain for a system of hierarchical authority when he revealed:

> [Luther] did once promise to abide by the judgment of the University of Paris, and thereupon were held public debates, and the exact words recorded by notaries sworn for both parties. But when his

[123] Neumann, *supra* n. 8 at 345.
[124] More, *supra* n. 2 at 43–45.
[125] More, *supra* n. 2 at 43–44.
[126] More, *supra* n. 2 at 44.
[127] More, *supra* n. 2 at 44.
[128] More, *supra* n. 2 at 47.
[129] See Bilder, *supra* n. 36 at 928.
[130] More, *supra* n. 2 at 106.
[131] More, *supra* n. 2 at 199.

> opinions were afterward, in Paris, by the university, condemned, then he refused to abide by their judgment, and reverted to his old expedient of ranting.[132]

Third, the *Dialogue* warned that Luther's and Tyndale's disregard for a hierarchical system of authority threatened justice. The ecclesiastical and civil law courts represented a substantive theory justice. As the mid-twelfth century canonist Gratium observed in the *Decretum*, justice is a gift from God.[133] Unlike the ecclesiastical and civil law courts, the secular Medieval and Renaissance common law courts were limited to errors of law and had nothing to do with justice.[134] More pointed to the just and compassionate nature of the ecclesiastical courts and the harshness of the secular courts when he discussed their handling of heretics. With respect to Church law, he explained:

> But certainly what the Church law on this calls for is good, reasonable, compassionate, and charitable, and in no way desirous of the death of anyone. For after a first offense the culprit can recant, repudiate by oath all heresies, do such penance for his offense as the bishop assigns him, and in that way be graciously taken back into the favor and graces of Christ's church. But if afterward he is caught committing the same crime again, then he is put out of the Christian flock by excommunication. And because, his being such, his mingling with Christians would be dangerous, the Church shuns him and the clergy give notice to the secular authorities—not exhorting the king, or anyone else either, to kill him or punish him, but in the presence of the civil representative, the ecclesiastical official not delivers him but leaves him to the secular authorities, and forsakes him as one excommunicated and removed from the Christian flock.[135]

In contrast, with respect to the secular law's treatment of heretics, More commented:

> No, all the severe punishment of heretics, with which such folk as favor them want so much to render the clergy infamous, is and has been—on account of the great outrages and temporal harms that such heretics have always been wont to do, and the seditious commotions that they are wont to make, besides the far surpassing spiritual hurts that they do to people's souls—devised and executed against them of necessity by good Christian princes and prudent rulers of the secular sphere, because in their wisdom they well perceived that the people would not fail to fall into many grievous and intolerable troubles if such seditious sects of heretics were not by severe punishment repressed in the beginning, and the spark well extinguished before it was allowed to grow to too great a fire.[136]

Also, More cautioned against Luther's and Tyndale's disregard for a hierarchical authority when he stated:

> And who for the defense of their disobedience have amended the matter with a heresy, boldly and stubbornly maintaining that since they had the ability to preach, therefore they were by God bound to preach; and that no man, or law that was made or could be made, has any authority to forbid them.[137]

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[132] More, *supra* n. 2 at 412.
[133] Uelmen, *supra* n. 4 at 1535.
[134] See Bilder, *supra* n. 36 at 927.
[135] More, *supra* n. 2 at 464.
[136] More, *supra* n. 2 at 485.
[137] More, *supra* n. 2 at 151.

When discussing Luther's belief in destiny, he warned of its legal consequences stating, "And therefore all laws they set at naught. And they hold that no one is obliged to obey any, but would be at liberty to believe what they please, and do what they please, just as they say that God does to us not what we deserve, but what he himself pleases."[138] Further, More forewarned that "For the laws and orders among people, with fear of punishment, once taken away, there is no man so strong that he could keep his pleasure long, who would not find a stronger one taking it from him."[139]

Issue Identification and Argument Development

Appellate review is limited to issues that point out the error in the lower court's judgment and define the decision that the higher court is asked to make.[140] In modern-day, American appeals, the written argument explains in persuasive detail the authorities and evidence on which a favorable decision should be based.[141] Oral argument, on the other hand, is an advocate's tool for focusing the court on the most important aspects of the case and an opportunity to discover the judge's doubts and concerns so he can explain why those doubts should not prevent a favorable decision.[142] Did More use an appellate framework to explain how a decision regarding Luther's and Tyndale's ideas should be reached and provide justification for the rejection of those ideas? Did More rely on authority to support his argument in a manner similar to a legal appeal? Did he use an appellate framework to focus his readers on the most important issues, convince them of his intellectual leadership on these issues, and dispel any doubts they may have had about the Church?

First, the *Dialogue* appears to use an appellate framework by identifying the issues for review. In a modern-day, American appeal, it is the responsibility of the appellant's attorney to point out the issues or errors to the higher court.[143] A persuasive appellate theory directs the appellate court's attention only to the most compelling reasons for reversal and usually raises no more than four issues because a theory is damaged, not strengthened, by adding additional weaker grounds that are unlikely to persuade the judges.[144] Similar to a legal appeal, More clearly delineated four issues for review that struck at the heart of the debate when he stated:

> First, I would begin where [the Messenger] began—with the abjuration of the man he had spoken of. Secondly, I would address the condemnation and burning of Tyndale's translation of the New Testament. Thirdly, I would say something about Luther and his sect in general. Fourthly and finally, the thing he mentioned last: that is, the warring and fighting against infidels, along with the condemning of heretics to death; which two points he himself had combined and tied together.[145]

Second, the *Dialogue* appears to use and rely on authority in support of its arguments in a manner similar to a legal appeal. In modern-day, American appeals, appellate review and argument is mostly focused on the law.[146] However, persuasive appellate arguments also rely on common sense and logic, are grounded in public policy, and are cognizant of how the case at hand will affect

[138] More, *supra* n. 2 at 457.
[139] More, *supra* n. 2 at 459.
[140] See Neumann, *supra* n. 8 at 333, 353.
[141] See Neumann, *supra* n. 8 at 351.
[142] See Neumann, *supra* n. 8 at 351.
[143] See Neumann, *supra* n. 8 at 353.
[144] See Neumann, *supra* n. 8 at 365–66.
[145] More, *supra* n. 2 at 56.
[146] See Neumann, *supra* n. 8 at 353.

future cases.[147] Medieval and Renaissance appeals in the ecclesiastical and civil law courts were based on equity and conscience, while the common law courts were limited to the law.[148] But the Chancery courts relied on different ideas of law and jurisprudence, probably using common law and ecclesiastical jurisprudence as guides.[149] Similar to the ecclesiastical and civil courts, judgments in the Chancery courts were based on notions of right and wrong or conscience. More appears to use the flexible approach of the Chancery court, relying on several different types of authority in support of his argument, i.e., Biblical examples,[150] temporal law,[151] common sense,[152] public policy,[153] and hypothetical situations that address the impact of the Luther's and Tyndale's reasoning on other situations.[154]

Third, the *Dialogue* appears to use an appellate framework through its use of conversation. Oral argument in appeals is a scholarly type of conversation that is most effective when conducted in a tone of "respectful intellectual equality."[155] It is not a speech, but a conversation in which the attorneys talk with the judges.[156] It is also an opportunity for the attorney to encourage the judges to look to him for intellectual leadership on the issues before the court.[157] More appears to apply this type of legal conversation in the *Dialogue*, which is a series of six conversations between More and the Messenger.[158] Although serious, these conversations are intellectual, lively, and courteous.[159] More even complemented the Messenger for enthusiastically defending his side, when he stated, "I, for my part, very sincerely thank you for your not having defended your side halfheartedly, like a corrupt attorney who would by collusion handle his client's case feebly for the pleasure of his adversary."[160] Throughout the *Dialogue*, More attempted to use these conversations to convince the readers of his intellectual leadership on the matters discussed through his knowledgeable, patient, and courteous conversations with the Messenger. More also attempts to keep the argument focused on the most important issues when he refused to allow the Messenger to inject additional issues or discuss them in an erratic manner.

Limitations of Review

Different degrees of deference serve to limit appellate review of lower court judgments.[161] In Modern-day, American appeals, often a lower court's decision is reviewed for an abuse of discretion, but some issues are reviewed de novo or anew.[162] Also, in some cases, it must not only be shown that there was error, but that the error resulted in harm.[163] Appeals in Medieval and Renaissance ecclesiastical and civil law courts offered a procedure for completely rehearing a

[147] See Neumann, *supra* n. 8 at 365–66.
[148] See Bilder, *supra* n. 36 at 927, 933.
[149] See Haskett, *supra* n. 67 at 256–57.
[150] E.g., More, *supra* n. 2 at 79–81, 106, 113,
[151] E.g., More, *supra* n. 2 at 381.
[152] E.g., More, *supra* n. 2 at 76, 87–89, 113, 350.
[153] E.g., More, *supra* n. 2 at 81, 419, 460, 485.
[154] E.g., More, *supra* n. 2 at 81.
[155] See Neumann, *supra* n. 8 at 350, 383.
[156] See Neumann, *supra* n. 8 at 384.
[157] See Neumann, *supra* n. 8 at 384.
[158] Wegemer & Smith, *supra* n. 105 at 18.
[159] See Wegemer & Smith, *supra* n. 105 at 18.
[160] More, *supra* n. 2 at 127.
[161] See Neumann, *supra* n. 8 at 355.
[162] See Neumann, *supra* n. 8 at 368–73.
[163] See Neumann, *supra* n. 8 at 365.

case.[164] However, review of a writ of error in the Medieval and Renaissance common law courts had a narrow scope of review limited to the record of the case.[165]

In the *Dialogue*, More and the Messenger appear to disagree on the limitations that should be placed on the review of the issues. It appears the Messenger wanted a narrow scope of review that focused on whether there had been an abuse of discretion and was limited to current events. He indicated his preference for a restrictive scope of review when he stated, "And that sometimes perchance, some judges would out of ignorance condemn as heresies such beliefs as the wiser and better-educated would in point of judgment accept as good and Catholic; and that the latter would discern and judge the contrary of that other judgment."[166] The Messenger also indicated he wanted to limit the facts or evidence to be reviewed when he stated, "for I do not mean any skepticism regarding the miracles done in days of old by God for his apostles or holy martyrs, in corroboration and propagation of the faith. I mean only those miracles that people tell and talk of nowadays as being done at those images, where these shrines are, and where we ourselves see some of them proved plainly false."[167] However, More appears to have wanted a much broader and less deferential scope of review that did not limit the facts and evidence in support of or against the issues identified. Nevertheless, More established restrictions, indicating that only the issues delineated should be determined, when he stated, "But yet whether [Tyndale] had in the translating of them any malicious intention or not, there I will, till I see further, play Saint Francis' part and judge the man no worse than the matter requires."[168] Further, More appears to have recognized that more than intellectual error was required to successfully convince his readers that Luther's and Tyndale's beliefs should not be accepted. For example, he not only argued that it was error to look to only Scripture, but maintained that harm has befallen those whom he has known to devote their study only to Scripture.[169]

Publication of Arguments

The publication of legal opinions is fundamental to the modern-day, American appeal. However, the argument in favor of publishing legal opinions was just beginning in the early sixteenth century. More's arguments for the publication of the *Dialogue* and those relating to the publication of an English translation of a Bible are similar to the arguments relating to legal publication. Was More's possible use of a legal framework also an attempt to further the humanist argument in favor of the publication of law or legal accessibility?

Unlike the humanists, legal publication, as advocated by the Rastellians, lacked a reformist temper.[170] However, they saw legal publication as an unveiling that unlocked a hidden law and drove back the boundaries of ignorance, which was a familiar humanist image.[171] Rastell wrote that law, "kept secretly in the knowledge of a few persons and from the knowledge of the great multitude may rather be called a trap and net to bring the people to vexation and trouble than a

[164] See Bilder, *supra* n. 36 at 914, 922.
[165] See Bilder, *supra* n. 36 at 926.
[166] More, *supra* n. 2 at 53.
[167] More, *supra* n. 2 at 114.
[168] More, *supra* n. 2 at 329.
[169] More, *supra* n. 2 at 149–55.
[170] Ross, *supra* n. 79 at 337–38.
[171] Ross, *supra* n. 79 at 337.

good order to bring them to peace and quietness."[172] More expressed a concern for just such a trap from both friend and foe in the opening of the *Dialogue* when he discussed his decision to write and publish the book. More explained that he put his conversations with the Messenger in writing, not only because the subject needs to be "attentively read and reflected upon," but because their conversations were so diversified and intricate he did not want to entrust it to the Messenger's memory alone.[173] Although More states he does not mistrust the Messenger, he noted the advantage of placing their conversation in writing "for the more security"[174] and expressed the concern that:

> [I]f it did happen that the messenger, out of furtive favor borne toward the wrong side, purposely distorted what was said, his employer could not only know the truth but also have occasion to be more wary of his messenger, who otherwise might happen to do harm, as long as he was mistaken for good.[175]

Further, More advised his readers that he decided to publish the book because copies had gone overseas and come into the possession of those with whom he disagreed.[176] He was concerned those men might maliciously change his words and print his book.[177] If this were to happen, he realized he would be caught in a net because "if [he] should afterward point out and criticize the differences, [he] might perhaps seem to be trying to make [his] case look better by amending [it]."[178]

Rastell argued the law should be published so men know what they are bound to obey however, should uncertainties or lawsuits arise, men should seek learned counsel.[179] In the *Dialogue*, More indicates his support for an English translation of the Bible.[180] However, he is concerned that men will not curtail their efforts to reading the Bible in a good and devout manner, exerting themselves to follow what is clear and obvious.[181] Instead, there is a fear that "people will much concern themselves with such parts of it as they are least qualified to" and such uneducated people will begin scrutinizing and discussing the Bible without the guidance of a teacher and take it upon themselves to teach others.[182] It is interesting that, in support of his argument, More refers to both Mosaic and temporal law.[183] First, More points to Saint Gregory Nazianzen's criticism of such "bold, officious dabblers in Scripture" when he explained that Moses received the law from God when he ascended the mountain and then, delivered it to the people who remained below.[184] The people are to keep and fulfill the laws, not debate them.[185] Second, More points to Plato's express prohibition of "those not admitted to this office, or qualified for it, to much involve and busy themselves in discussions and debates about the temporal laws of the city."[186]

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[172] Ross, *supra* n. 79 at 331, quoting John Rastell's *Prohemium*, in*Expoitione Terminorum Legum Anglorum* (c. 1525), reprinted in *The Thought and Culture of the English Renaissance: An Anthology of Tudor Prose 1481–1555*, 176–77 (Elizabeth M. Nugent ed., 1956).
[173] More, *supra* n. 2 at 39–40.
[174] More, *supra* n. 2 at 40.
[175] More, *supra* n. 2 at 40.
[176] More, *supra* n. 2 at 40.
[177] More, *supra* n. 2 at 40.
[178] More, *supra* n. 2 at 40–41.
[179] See Ross, *supra* n. 79 at 340.
[180] More, *supra* n. 2 at 41.
[181] More, *supra* n. 2 at 383.
[182] More, *supra* n. 2 at 380–81.
[183] More, *supra* n. 2 at 380-81.
[184] More, *supra* n. 2 at 380.
[185] See More, *supra* n. 2 at 380.
[186] More, *supra* n. 2 at 381.

Conclusion

In the *Dialogue*, More appears to have used the framework of a legal appeal to correct misbelief, clarify the Church's doctrine, ensure the intent of that doctrine was given effect, encourage a uniform doctrine, and accuse Luther and Tyndale of promoting false beliefs. His use of this type of legal framework emphasized the importance of the Church's authority and its importance in the English legal system, since Medieval and Renaissance legal appeals were conducted in the ecclesiastical and civil law courts. Similar to legal appeals, More articulated the issues to be decided and developed his argument by relying on accepted authorities with adherence to certain limitations to the review of those issues. In accordance with modern-day practice and the early sixteenth-century humanist argument in favor of publishing legal opinions as well as the growing practice in the early sixteenth century Chancery courts of recording every item of procedure, More chose to publish the *Dialogue*.

If the *Dialogue* used the framework of a legal appeal, then it is necessary to determine who More intended to serve as the judges. The *Dialogue* presents a complex and troubling case that demands its judges to discuss the arguments and examine the authority relied on. When discussing his decision to publish the *Dialogue*, More stated that he submitted his work to the examination and judgment of men more learned than himself and that

> [S]ince it would not have become me to be judge over the judgment of those whom I had chosen and taken for my judges, they personally being such that it would be hard for anyone to say which of them had any edge in terms of erudition, intelligence, or prudence, I had no choice but to go along with the majority.[187]

However, More's decision to publish the *Dialogue* suggests he also wanted his readers to discuss and examine his arguments. In appeals, once the judges have reached a decision, they issue a written opinion explaining their reasoning. Perhaps More's apparent use of the framework of a legal appeal in the *Dialogue* was simply to encourage discussion of the beliefs of Luther and Tyndale and to promote the publication of reasoned opinions on the matter.

[187] More, *supra* n. 2 at 43.